

transfers before the transferor trades or banks the credits.

(c) *Limitations on credit use.* (1) Credits generated prior to 2004 may only be used for demonstrating compliance with the refinery or importer annual average standards under § 80.195 during the 2005 and 2006 averaging periods. Such credits may be used to demonstrate compliance with the standards under § 80.216 during the 2004 through 2006 averaging periods, and with the standards under § 80.240 during the 2004 through 2007 averaging periods, and the 2008 and 2009 averaging periods, if allowed under the terms of a hardship extension under § 80.265.

(2) Credits generated in 2004 or later may only be used for demonstrating compliance with standards during an averaging period within five years of the year of generation.

(3) A refiner or importer possessing credits must use all credits prior to falling into compliance deficit under § 80.205(e).

(4) Credits may not be used to meet corporate pool average standards under § 80.195.

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40184, June 12, 2002]

§§ 80.320–80.325 [Reserved]

SAMPLING, TESTING AND RETENTION REQUIREMENTS FOR REFINERS AND IMPORTERS

§ 80.330 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its sulfur content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) Except as provided in paragraph (a)(3) of this section, the requirements of this section apply beginning January 1, 2004, or January 1 of the first year of allotment or credit generation under § 80.275 or § 80.305, whichever is earlier.

(3) Prior to January 1, 2004:

(i) Any refiner may release gasoline from the refinery prior to obtaining the test results required under paragraph (a)(1) of this section.

(ii) Any refiner of conventional gasoline may combine samples of gasoline from more than one batch of gasoline or blendstock prior to analysis and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of § 80.101(i)(2).

(4)(i) Beginning January 1, 2004, any refiner who produces gasoline using computer-controlled in-line blending equipment is exempt from the requirement of paragraph (a)(1) of this section to obtain the test results required under paragraph (a)(1) of this section prior to the gasoline leaving the refinery, provided that the refiner obtains an exemption from this requirement from EPA. To obtain such exemption, the refiner must:

(A) Have been granted an in-line blending exemption under § 80.65(f)(4); or

(B) If the refiner has not been granted an exemption under § 80.65(f)(4), submit to EPA all of the information required under § 80.65(f)(4)(i)(A). A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the submission is true to the best of his/her belief must accompany any submission under this paragraph (a)(4)(i)(B).

(ii) Refiners who seek an exemption under paragraph (a)(4)(i) of this section must comply with any request by EPA for additional information or any other requirements that EPA includes as part of the exemption.

(iii) Within 60 days of EPA's receipt of a submission under paragraph (a)(4)(i)(B) of this section, EPA will notify the refiner if the exemption is not approved or of any deficiencies in the refiner's submission, or if any additional information is required or other requirements are included in the exemption pursuant to paragraph (a)(4)(ii) of this section. In the absence of such notification from EPA, the effective date of an exemption under paragraph (a)(4)(i) of this section for refiners who do not hold an exemption under § 80.65(f)(4) is 60 days from EPA's

receipt of the refiner's submission under paragraph (a)(4)(i)(B) of this section.

(iv) EPA reserves the right to modify the requirements of an exemption under paragraph (a)(4)(i) of this section, in whole or in part, at any time, if EPA determines that the refiner's operation does not effectively or adequately control, monitor or document the sulfur content of the refinery's gasoline production, or if EPA determines that any other circumstances exist which merit modification of the requirements of an exemption, such as advancements in the state of the art for in-line blending measurement which allow for additional control or more accurate monitoring or documentation of sulfur content. If EPA finds that a refiner provided false or inaccurate information in any submission required for an exemption under this section, upon notification from EPA, the refiner's exemption will be void ab initio.

(b) *Sampling methods.* For purposes of paragraph (a) of this section, refiners and importers shall sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057–95, entitled “Standard Practice for Manual Sampling of Petroleum and Petroleum Products.”

(ii) Samples collected under the applicable procedures in ASTM method D 5842–95, entitled “Standard Practice for Sampling and Handling of Fuels for Volatility Measurement,” may be used for measuring sulfur content if there is no contamination present that could affect the sulfur test result.

(2) Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled “Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.”

(c) *Test method for measuring sulfur content of gasoline.* (1) For purposes of paragraph (a) of this section, refiners and importers shall use the method

provided in § 80.46(a)(1) or one of the alternative test methods listed in § 80.46(a)(3) to measure the sulfur content of gasoline they produce or import.

(2) Except as provided in § 80.350 and in paragraph (c)(1) of this section, any ASTM sulfur test method for liquefied fuels may be used for quality assurance testing under § 80.400, or to determine whether gasoline qualifies for a S-RGAS downstream standard, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(a)(1).

(d) *Test method for sulfur in butane.* (1) Refiners and importers shall use the method provided in § 80.46(a)(2) to measure the sulfur content of butane when the butane constitutes a batch of gasoline.

(2) Except as provided in paragraph (d)(1) of this section, any ASTM sulfur test method for gaseous fuels may be used for quality assurance testing under §§ 80.340(b)(4) and 80.400, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in § 80.46(a)(2).

(e) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95 and D 5842–95 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE-131), room M-1500, U.S. Environmental Protection Agency, Docket No. A-97-03, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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